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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,244	09/29/2003	Nasir Shahrestani	END-5034	1898
27777	7590	12/23/2005	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			ROY, ANURADHA	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/674,244	SHAHRESTANI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anuradha Roy	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 12-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/12/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Restrictions

Claims 12-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 9 December 2005.

### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Menzel et al. (US Publication No. 2003/0078515).

With reference to claims 1 & 5, Menzel et al. discloses a conscious sedation system comprising:

a controller (10,20,21,[0048]) which generates an audio request for a predetermined response from a patient;

a response testing apparatus (12,13, [0048], [0050]) including:

a request assembly (14,15,[0048]) which communicates to the patient the request generated by the controller;

a response assembly (17,18,[0048],[0057]) which is used by the patient to generate the response and which communicates the response to the controller, wherein the controller is programmed to generate a request and to analyze the patient's response to the request and determine and record a baseline audio stimulus for the patient and after determining the baseline audio stimulus, the controller generates a request based upon the baseline stimulus (50,[0048],[0049],[0091]).

Regarding claims 6 & 11, Menzel et al. discloses a response testing apparatus (12,13, [0048], [0050]) of a conscious sedation system comprising:

a request assembly (14,15,[0048]) which communicates to the patient a request;

a response assembly (17,18,[0048],[0057]) which is used by the patient to generate a response and which communicates the response to a sub-controller (10,20,21,[0048]), wherein the sub-controller is programmed to analyze the

patient's response to the request and calibrates the patient's level of hearing based on the patient's response to establish a baseline (50,[0048],[0049],[0091]).

In regards to claim 7, Menzel et al. discloses a system, wherein the request assembly (14,15,[0048]) generates audio vibration stimulus ([0061]-[0068]) to the patient. Examiner contends any audio stimulus will simultaneously render a vibration.

According to claims 2 & 8, Menzel et al. discloses a system, wherein the audio stimulus are at varying intensity levels ([0057], [0060]-[0068], [0076]).

Regarding claims 3 & 9, Menzel et al. further discloses a system, wherein the audio stimulus is continuous ([0061] & [0063]).

Lastly with regard to claims 4 & 10, Menzel et al disclose a system, wherein the audio stimulus is discrete ([0062],[0064],[0066]).

### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hickie (US Patent No. 6,745,764) discloses a conscious sedation system using audio stimulus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anuradha Roy whose telephone number is (571) 272-

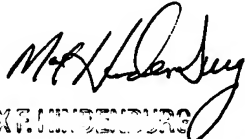
Art Unit: 3736

6169 and whose email address is anuradha.roy@uspto.gov. The examiner can normally be reached between 8:00am and 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

~AR~

  
MAX HINDENBURG  
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